

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
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IN THE MATTER OF:
ANNA GONZALEZ

Applicant

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OZAH Case No. CU 21-07

Before: Derek J. Baumgardner, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On March 21, 2021, Anna Gonzalez (“Gonzalez” or “Applicant”) filed an application seeking a conditional use to establish a Group Day Care for up to 12 children under section 59.3.4.4.D of the Zoning Ordinance. The application proposes to increase the capacity of the existing Family Day Care (up to 8 persons) to a Group Day Care (9-12 persons). The property is located at 9803 Montauk Avenue, Bethesda, Maryland, and is zoned R-60.

On June 7, 2021, OZAH issued a Notice of Public Hearing and Notice of Parking Waiver scheduling this matter for a hearing on July 19, 2021.

On June 16, 2021, Planning Staff issued its report recommending approval of the application with conditions. The Planning Board subsequently approved the project by unanimous vote on July 1, 2021, issuing its report on July 2, 2021. The conditions recommended by Planning Staff and affirmed by the Board were as follows:

1. The Group Day Care facility must be limited to a maximum of twelve (12) children and two (2) non-resident employees;
2. The hours of operation are limited to Monday through Friday, 7:30 a.m. to 6:00 p.m.; and
3. The Applicant must schedule staggered drop-off and pick-up of children with a maximum of two (2) vehicles dropping off or picking up children during any fifteen (15)-minute period.

The public hearing proceeded as scheduled on July 19, 2021. The applicant, Ms. Gonzalez, the owner and operator of the proposed Group Daycare, testified in support of the application and

accepted the conditions contained within the Staff Report. T. 15. No one from the community testified at the hearing but the record contains several letters of support. Exhibits 17, 18. One letter was received from a neighboring property owner with concerns regarding the proposed use. Exhibit 12. The record was left open for ten (10) days following the conclusion of testimony and no further comments were received.

After a thorough review of the record in this case, including all documents and testimony, the Hearing Examiner approves the conditional use with the conditions included in Part IV of this Report for the following reasons.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject property is located at 9803 Montauk Avenue, Bethesda, Maryland and is currently improved by a single-family detached home with current use as a Family Day Care for up to eight (8) children. Technical Staff ("Staff") provided the following description of the subject property:

The Subject Property (Property or Site) is 9803 Montauk Avenue in Bethesda, otherwise known as Lot 22, Block F, (Plat #2755, 1951). It is improved with a detached house (Figure 1) and the Applicant has been operating a Family Day Care (up to 8 persons), for infants through five-year-old children, for approximately two years. The existing Family Day Care is currently permitted as a limited use for up to 8 children and occupies the main level of the house. The 5,400-square foot lot is located on the northeast corner of the intersection of Montauk Avenue and Stoneham Road.

The existing Family Day Care is accessed via the front door of the house that opens into the daycare area. People dropping off children may park on the street and walk with their child on the sidewalk to the front entrance of the house. The rear yard of the house is enclosed by a six-foot tall fence along the northern, eastern and southern property lines. As shown in Figure 1 below, the outdoor play area is located in the rear yard, bounded by fencing (6 feet in height) on all sides. Unrestricted on-street parking is allowed on both sides of Montauk Avenue in the vicinity of the Property, however, no off-street parking is provided on the Subject Property consistent with the development pattern of the majority of homes within the surrounding neighborhood.

Exhibit 19, p. 3.

An aerial view of the property, shown below and marked as Figure 1 in the staff report, shows the property's shape and size including the existing fence and rear yard play area. A front view of the property, shown below and marked as Figure 3, shows the property as it can be presently seen from Montauk Avenue.



Figure 1 – Aerial view of the subject Property



Figure 3 – Existing conditions of the subject property, front view

B. Surrounding Neighborhood

To determine the compatibility of the proposed use with the surrounding area, it is necessary to delineate the “surrounding neighborhood”, which is the area that will be most directly impacted by the proposed use. Once delineated, the Hearing Examiner must assess the character of the neighborhood and determine whether the impacts of the proposed conditional use will adversely affect that character.

Staff defines the neighborhood as being generally bounded by Lone Oak Drive to the north, Holmhurst Road to the west, extending to De Paul Drive to the east, and Stoneham Road to the south. Exhibit 19, p. 4. Staff notes that the neighborhood is comprised “exclusively of single-family detached homes and is bordered by Ashburton Elementary School to the east.” *Id.* Figure 2 below shows the staff defined neighborhood outlined in blue:

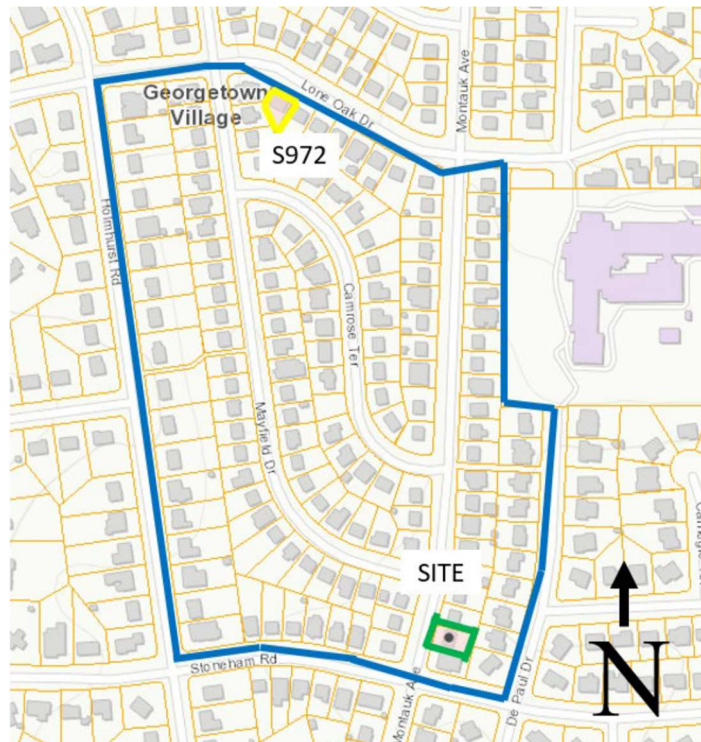


Figure 2: Staff-Defined Neighborhood

The Hearing Examiner concurs with Staff's delineation of the surrounding neighborhood and further finds that the neighborhood is single-family residential in character.

C. Proposed Use

Applicant proposes to expand the existing Family Day Care (up to 8 persons) to a Group Day Care (9-12 persons), serving children ages birth to five years old. Exhibit 6. There are no structural alterations proposed under this application for the interior or exterior of the building. *Id.* The day care area totals 850 sq. ft. with an outdoor play area in the rear of the property surrounded by a six-foot high perimeter fence. *Id.* The proposed day care will operate from 7:30am-6:00pm with one resident staff (the Applicant) and two non-resident employees. *Id.* A staggered drop-off and pick-up schedule will be utilized to mitigate traffic impacts and queuing on Montauk Avenue and surrounding public streets. *See* Exhibit 7. No signage is proposed under this application. Exhibit 19, p. 5.

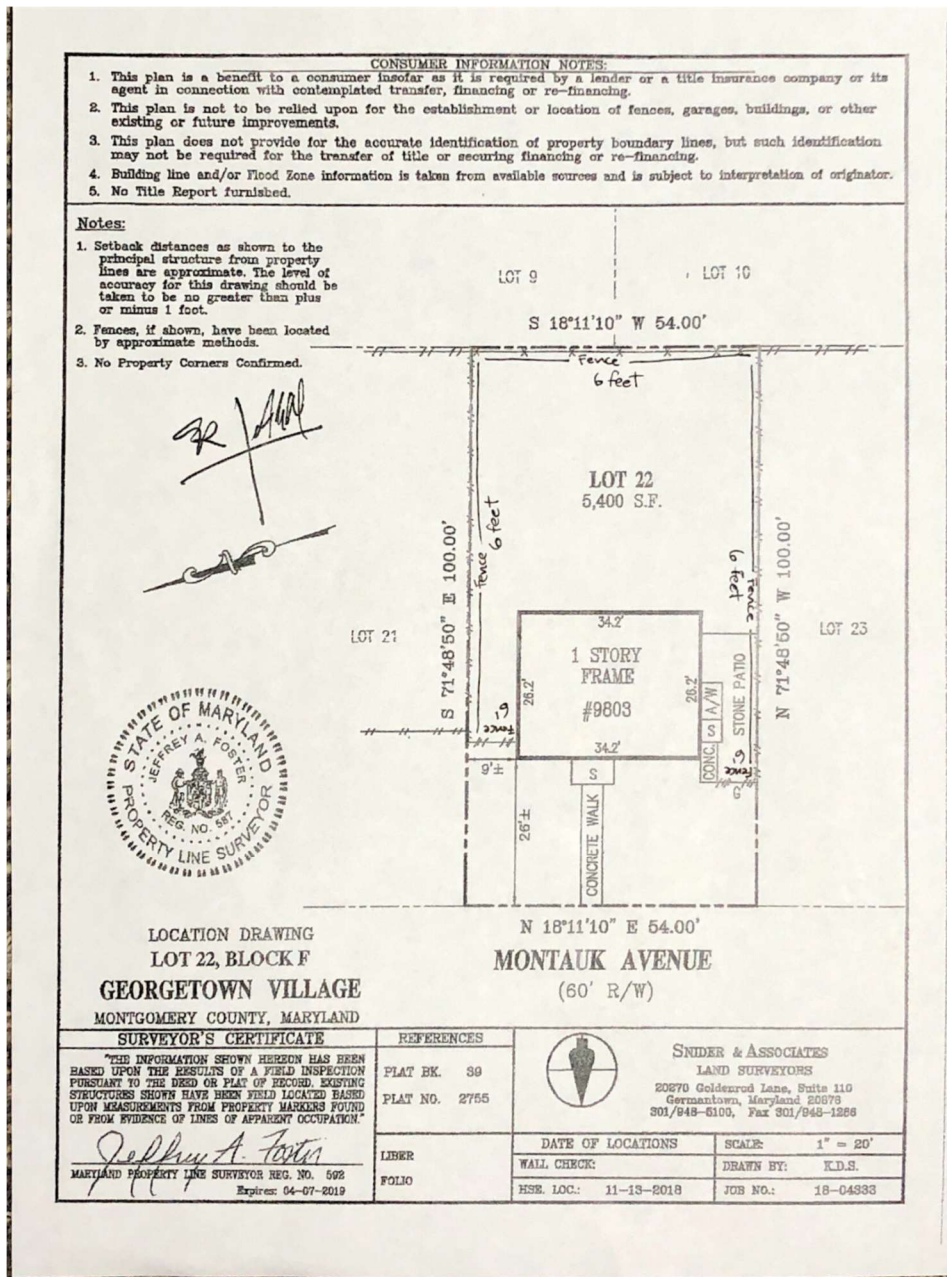
1. Conditional Use Site Plan

The conditional use site plan shown below on page 8 illustrates property dimensions, lot lines, and the existing perimeter fence located in the rear yard.

2. Operations

a. Staffing.

The Applicant concurred with the condition limiting staffing to the occupants of the home and the two (2) non-resident staff persons. T. 15. This mirrors the information contained in her Statement of Justification in support of the application. Exhibit 6.



Conditional Use Site Plan – Exhibit 4

b. Amenities.

The existing family day care consists of approximately 850 sq. ft. of indoor space within the home for the routine care of young children as well as a fenced outdoor play area in the rear yard of the premises. Exhibit 6. The Applicant also states that children will enjoy “neighborhood

nature walks” and that “we use a trolley that fits 6 children and we also use a walking donut rope for older children to make a line.” *Id.* at 2. Outdoor play hours typically occur from 10:30 a.m. to 12:00 p.m. and from 4:00 p.m. to 6:00 p.m. Exhibit 19. The play area consists of a play set, sandbox, floor area for bicycles and tricycles, garden area for planting, and “plenty of green area for [children] to run around and play.” T. 11. Figure 4, shown below, shows the rear yard play area, as viewed within the rear yard, looking east. Exhibit 19, p. 6.



Figure 4: Rear Yard Play Area

3. Transportation and Parking

a. Parking & Pick-Up/Droff-Off

The Applicant states that children will be dropped off and picked up at the front of the property according to a staggered schedule with drop-off occurring between 7:30 a.m. and 9:30 a.m. and pick-up occurring between 4:30 p.m. and 6:00 p.m., as shown below in Exhibit 7:

Morning Peak Period Drop-Off and Staff Arrivals (6:30am-9:30am)		
Time	Number of Children	Number of Non-Resident Staff
6:30-6:45 am		
6:45-7:00 am		
7:00-7:15 am		
7:15-7:30 am		
7:30-7:45 am	2	
7:45-8:00am	2	1
8:00-8:15am	1	
8:15-8:30 am	1	1
8:30-8:45 am	1	
8:45-9:00 am	2	
9:00-9:15 am	2	
9:15-9:30 am	1	
Total	12	2

Evening Peak Period Pick-Up and Staff Departures (4:00pm-7:00PM)		
Time	Number of Children	Number of Non-Resident Staff
4:00-4:15pm		
4:15-4:30pm		
4:30-4:45pm	2	
4:45-5:00pm	2	
5:00-5:15pm	1	
5:15-5:30pm	2	1
5:30-5:45pm	2	
5:45-6:00pm	3	1
6:00-6:15pm		
6:15-6:30pm		
6:30-6:45pm		
6:45-7:00pm		
Total	12	2

Exhibit 7. The front entrance to the home will also serve as the primary entrance to the Group Day Care. Exhibit 6. Staff provided the following table summarizing required and proposed parking:

Table 3: Conditional Use Parking Requirements		
	Required Spaces	Proposed
Vehicle Parking Requirement (Section 59.6.2.4.B)	Group Day Care: 2 (2/ non-resident employee) Dwelling: 2 Total: 2	on street parking ¹

¹ The zoning code specifically allows the parking spaces for the daycare to be provided on the street.

Exhibit 19, p. 11. Staff further notes that “[a]dequate on-street parking is available along Montauk Avenue, where there are no parking restrictions, to serve the expanded Conditional Use.” *Id.* at 5. The Applicant is requesting a parking waiver under this application.

b. Transportation & Roadways

Staff notes that Montauk Avenue is designated as a secondary residential street within a 60-foot wide public right-of-way with four-foot wide sidewalks with six-foot wide buffers with no

existing or planned bikeway facilities or bus service. Exhibit 19, p. 7. Staff advises that nearby transit service is limited to Ride On Bus Route 47, which runs along Fernwood Road to the west of the subject property, and WMATA Metrobus Routes J1 and J2, which run along Old Georgetown Road to the east, which provide service to Westfield Montgomery Mall, the Silver Spring CBD, the Bethesda CBD, Walter Reed National Military Hospital, the NIH, and Rockville/Bethesda/Silver Spring/Medical Center Metrorail stations. *Id.*

c. Local Area Transportation Review

Staff notes that under the 2020-2024 Growth and Infrastructure Policy, a traffic study would be required to satisfy the Local Area Transportation Review (LATR) test only if the proposed day care center would generate more than 50 person-trips during weekday AM and PM peak hours. Exhibit 19, p. 8. Based on the Institute of Transportation Engineers' (ITE) trip generation rates for a day care center, the proposed Group Day Care is only projected to produce 14 peak-hour morning and evening trips. *See* Table 1 (Trip Generation), Exhibit 19, p. 8. This falls below the LATR 50-trip threshold and therefore a traffic study is not required. *Id.*

4. Landscaping and Lighting

a. Landscape Plan

No additional landscaping or screening is proposed under this application. The existing outdoor play area in the property's rear yard is surrounded by a six-foot wooden perimeter fence. Exhibit 19, p. 3.

b. Lighting

No additional lighting is proposed under this application. The property maintains residential lighting and there is no indication that lighting will be altered, modified, or enhanced under this conditional use. The Applicant states that the property currently has a "motion sensor

light that illuminates the entire yard.” Exhibit 6, p. 1. Staff found that “existing lighting is residential in nature and will not cause any unreasonable glare on neighboring properties.” Exhibit 19, p. 12.

D. Environmental Issues

Staff advises that no streams, wetlands, buffers, or known habitats of rare, threatened, or endangered species exist on the property. Exhibit 19, p. 8. As no new construction is proposed, the application is not subject to Chapter 22A, Forest Conservation Law. See Exhibit 3. For these reasons, Staff concluded that the proposed use is in conformance with Environmental Guidelines. Exhibit 19, p. 8.

E. Community Response

OZAH received one letter from a community member in opposition to the requested use indicating concerns regarding noise, traffic, parking, and safety. Exhibit 12. The Applicant submitted multiple letters of support from community members. Exhibits 17 and 18.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific to a use (in Article 59.3 of the Zoning Ordinance) and general (*i.e.*, applicable to all conditional uses, in Division 59.7.3 of the Zoning Ordinance). The specific standards applied in this case are those for a residential care facility for more than sixteen (16) persons. *Montgomery County Zoning Ordinance*, §59.3.3.2.E.2.c. “The appropriate standard to be used in determining whether a requested [conditional use] would have an adverse effect and, therefore, should be denied, is whether there are facts and circumstances that show that the particular use proposed at the

particular location proposed would have any adverse effects above and beyond those inherently associated with such a [conditional use].” *Montgomery County v. Butler*, 417 Md. 271, 275 (2010).

Weighing all the testimony and evidence of record under a preponderance of the evidence standard (*Zoning Ordinance*, §7.1.1.), the Hearing Examiner concludes that the conditional use proposed in this application, with the conditions imposed in Part IV of this Report and Decision, satisfies all of the specific and general requirements for the use and does not present any adverse effects above and beyond those inherently associated with such a use.

A. Necessary Findings (Section 59.7.3.1.E)

The general findings necessary to approve all conditional uses are found in Section 59.7.3.1.E. of the Zoning Ordinance. Standards pertinent to this approval, and the Hearing Examiner's findings for each standard, are set forth below.

1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:

a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;

The proposed conditional use will supersede the existing use of a Family Day Care, a use permitted by right in this R-60 zone. Staff indicate that no previous approvals are relevant to this proposed use, and that no amendments are required. Exhibit 19, p. 8.

Conclusion: Based on the evidence in the record and having no evidence to the contrary, the Hearing Examiner finds that this standard has been met. There are no previous approvals on site other than the permitted by right use of a Family Day Care which will be superseded by the proposed Group Day Care.

b. satisfies the requirements of the zone, use standards under Article 59.3, and to the extent the Hearing Examiner finds

necessary to ensure compatibility, meets applicable general requirements under Article 59.6;

This subsection reviews the following: (1) development standards of the R-60 Zone (Article 59.4); (2) the specific use standards for a Group Day Care (up to 12 children) (Article 59.3.4.4.D.2); and (3) the development standards for all uses (Article 59.6). The Hearing Examiner addresses these standards in Part III.C, D, and E of this Report.

c. substantially conforms with the recommendations of the applicable master plan;

The subject property is located within the North Bethesda Garrett Park Master Plan area. Staff found that “the proposal is in substantial conformance with the Master Plan.” Exhibit 19, p. 12. According to Staff, while the Master Plan does not specifically discuss this property, it does “include guidance about day cares, special exceptions/conditional uses, and residential areas.” Exhibit 19, p. 7. Staff provide the following excerpt from the Master Plan:

Encourages the provision of child day-care facilities at other appropriate locations in the planning area. Consider day care centers as an amenity associated with applications for optional zones. Require the provision of day care facilities as part of the redevelopment process in areas where redevelopment occurs. Support expanded use of public buildings for childcare.

Exhibit 19, p. 7, citing the Master Plan at p.229.

Staff opines that the existing Family Day Care (up to 8 persons) has been operating from this property for two years and the modest expansion to a Group Day Care with up to 12 children will not change the character of the neighborhood. *Id.* Staff further found that the property is located in an appropriate location for a Group Day Care Facility (9-12 Persons) and is compatible with the neighborhood. *Id.*

Conclusion: The Hearing Examiner agrees with Staff that the proposed use substantially conforms to the Plan. The North Bethesda Garrett Park Master Plan does not prohibit or otherwise proscribe the use and the proposed conditional use maintains the residential character of both structure and

use in compliance with the Plan by providing day care services in the community. Moreover, the Plan calls for day care facilities as an amenity for the surrounding community. In sum, the expansion from Family Day Care to Group Day Care will not change the character of the neighborhood and substantially conforms to the recommendations of the Plan.

d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the [master] plan.

The application does not propose any interior or exterior alterations to the existing residential structure. Moreover, no exterior property changes are proposed, as the rear yard play area will remain the same. The proposed use increases the capacity of the day care operation from up to 8 children to a maximum of 12 children, a modest increase.

Conclusion: The Hearing Examiner finds that the proposed use as a Group Day Care will not alter the character of the surrounding neighborhood in a manner inconsistent with the Plan. The structure will maintain its residential character with no exterior alterations. The property meets all relevant development standards with the exception of the requested parking waiver, and will have no discernable impact on the character of this residential neighborhood. For these reasons the Hearing Examiner finds that the proposed Group Day Care is harmonious with and will not alter the residential character of the surrounding neighborhood which is consistent with the North Bethesda Garrett Park Master Plan.

e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;

Staff identified one approved conditional use within the surrounding neighborhood, an existing Accessory Apartment in a single-family dwelling located at 414 Lone Oak Drive. Exhibit 19, p. 12. Staff further opined that the proposed daycare expansion “will not affect the area adversely or alter the area’s predominantly residential nature” noting that “the existing day care has been operating on the Site since April 2018, the increase in the number of children being served is modest, and the Applicant is not proposing any physical changes to the Property.” *Id.*

Conclusion: The Hearing Examiner concurs with Staff that approval of this conditional uses does not impact the area adversely or alter the predominantly residential nature of the area.

f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

Staff states that there are adequate public services and facilities to serve the proposed use and advises that a Preliminary Plan of Subdivision is not required. Exhibit 19, p. 13.

Conclusion: The proposed Group Day Care will be restricted to a maximum of 12 children, increasing the number of children on-site by only nine from the existing Family Day Care. As this

increase is modest, the Hearing Examiner finds that the use and structure will be served by adequate public services and facilities with no detrimental impact to surrounding properties.

g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;

ii. traffic, noise, odors, dust, illumination, or a lack of parking; or

iii. the health, safety, or welfare of neighboring residents, visitors, or employees.

This standard requires the Hearing Examiner to identify inherent and non-inherent adverse effects of the proposed use on nearby properties and the surrounding area. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects, alone, are not enough to deny a conditional use. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* A conditional use may be denied if it will have non-inherent adverse effects, alone or in combination with inherent effects, that cause “undue” harm to the surrounding neighborhood.

Staff identifies the following inherent physical and operational characteristics of a Group Day Care facility: (1) vehicular trips to and from the site; (2) outdoor play areas; (3) noise generated by children; (4) drop-off and pick-up areas; and (5) lighting. Exhibit 19, p. 13. The Applicant's transportation plan indicates a total of 12 maximum trips to and from the site for children and staff with an adequate and safe drop-off/pick-up location in front of the property along

Montauk Avenue and adjacent public streets. The rear yard play area is fully fenced with a 6-foot tall wooden fence and contains children's play facilities as typical for a residential back yard or Family/Group Day Care. No lighting enhancements are proposed under this application. There is no evidence in the record to suggest that the noise generated by children is particularly egregious on this site. Staff has determined that the proposal will not have any non-inherent effects at this location. Exhibit 28, p. 13.

Conclusion: The Hearing Examiner finds that the proposed use will not cause undue harm to the character of the surrounding area due to any non-inherent adverse effects, alone or in combination with any inherent effects. This application and the testimony provided at the hearing did not provide any facts to cause the Hearing Examiner to conclude the Group Day Care proposed would have any material adverse impact on the property or neighboring properties. Several conditions of approval stated at the conclusion of this report and recommendation are intended to mitigate the inherent adverse impacts of this use in the community.

2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

The application does not propose any interior or exterior modifications to the existing single-family home.

Conclusion: The Hearing Examiner finds the proposed structure to be compatible with the character of this residential neighborhood and will maintain the residential nature of the community.

B. Development Standards of the Zone (R-60)

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the R-60 Zone, contained in Article 59.4 of the Zoning

Ordinance. Staff compiled data and produced Table 2, shown below, indicating that all development standards in the R-60 zone have been satisfied by this application. Exhibit 19, p. 10.

Table 2: Conditional Use Data Table (R-60 Zone, Pre-1958)		
Development Standard	Required/Permitted	Provided*
Minimum Lot Area: (Section 59.4.4.9.B.1)	6,000 sq. ft.	5,400 sq. ft. ¹
Minimum Lot Width at Front Building Line (Section 59.4.4.9.B.1)	60 feet	±52 feet ²
Minimum Lot Width at Front Lot Line (Section 59.4.4.9.B.1)	25 feet	±53 feet
Maximum Density (Section 59.4.4.9.B.1)	1 unit (7.26 dwelling units/acre)	1 unit
Maximum Lot Coverage (Section 59.4.4.9.B.1)	35 %	±20%
Minimum Front Setback (Section 59.4.4.9.B.2)	25 feet	±25 feet
Minimum Side Setback (Section 59.4.4.9.B.2)	8 feet	±8 feet
Minimum Sum of Side Setbacks (Section 59.4.4.9.B.2)	18'	±16 feet ³
Minimum Rear Setback (Section 59.4.4.9.B.2)	20 feet	±46 feet
Maximum Height (Section 59.4.4.9.B.3)	35 feet	±25 feet

Conclusion: Having no evidence to the contrary, the Hearing Examiner finds based on this record that all development standards required in the R-60 zone have been satisfied.

C. Use Standards for Group Day Care (Section 59.3.4.4.D.2)

The specific use standards for approval of a Group Day Care, generally, are set out in Section 59.3.4.4.D of the Zoning Ordinance:

- 1. Defined. Group Day Care (9-12) persons mean a Day Care Facility for 9-12 people where staffing, operations, and structures comply with State and**

local regulations and the provider's own children under the age of 6 are counted towards the maximum number of people allowed

2. Use Standards

a. Where a Group Day Care is allowed as a limited use, it must satisfy the following criteria:

- i. The facility must not be located in a townhouse or duplex building type.**
- ii. In a detached house, the registrant is the provider and a resident. If the provider is not a resident, the provider may file a conditional use application for a Day Care Center (13-30 Persons) (See Section 3.4.4.E)**
- iii. In a detached house, no more than 3 non-resident staff members are on-site at any time.**
- iv. In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.**

This property is improved by a single-family detached house in an R-60 Zoning District and the Applicant is the operator and prospective holder of the conditional use and resident of the property. Exhibit 6. The proposed Group Day Care will be operated by the Applicant and two non-resident staff persons. *Id.* The Applicant will be required to adhere to all state and local regulations pertaining to child care facilities.

Conclusion: The Hearing Examiner finds that the proposed use as conditioned meets these requirements. A condition of approval will require that all operations and personnel must meet and maintain all Federal, State, and County certificates, licensure, and regulatory requirements. Based upon the uncontested record in this case, all other definitional requirements having been met, the Hearing Examiner finds as this use is not a limited use in this R-60 zoning district and satisfies all use standards for a Group Day Care.

D. General Development Standards (Article 59.6)

Article 59.6 sets the general requirements for site access, parking, screening, parking lot landscaping, lighting, and signs. The requirements of these sections need be satisfied only "to the extent the Hearing Examiner finds necessary to ensure compatibility." *Zoning Ordinance*,

§59.7.3.1.E.1.b.

1. Parking Standards & Request for Parking Waiver

Under Section 59.6.2.4.B of the Zoning Ordinance, the Applicant is required to provide two (2) parking spaces for this single-family dwelling with Group Day Care. The Applicant requests a parking waiver under Section 59.6.2.10 to provide the two required parking spaces for the dwelling as the existing single-family dwelling does not support a driveway or any other location where off-street parking could be provided. Staff supports the request for a parking waiver as it determined that “adequate on-street parking exists along Montauk Avenue...to serve the proposed Conditional Use.” Exhibit 19, p. 11. Staff further stated that many of the surrounding homes similarly lack off-street parking and that Montauk Avenue and adjacent public streets do not have restricted or otherwise limited parking. *Id.*

Conclusion: The Hearing Examiner finds that a parking waiver is warranted for this conditional use and concludes that good cause has been shown to grant a parking waiver for two (2) off-street parking spaces. Therefore, this parking waiver is granted.

2. Site Perimeter Landscaping and Screening

Division 6.4 and 6.5 of the Zoning Ordinance set minimum standards for site landscaping, which are intended to “preserve property values, preserve and strengthen the character of communities, and improve water and air quality.” §59.6.4.1. Section 6.5.2. excludes single-family detached homes from the technical screening requirements of the Zoning Ordinance, provided that the use is compatible with the neighborhood:

In the Agricultural, Rural Residential, and Residential Detached zones, a conditional use in any building type, except a single-family detached house, must provide screening under Section 6.5.3 if the subject lot abuts property in an Agricultural, Rural Residential, or Residential Detached zone that is vacant or improved with an agricultural or residential use. All conditional uses must have screening that ensures compatibility with the surrounding neighborhood.

Section 59.6.5.3.A.1 states that:

Screening is required along a lot line shared with an abutting property that is vacant or improved with an agricultural or residential use.

Section 6.5.3.C.7 sets out specific landscape requirements for conditional uses in Residential Detached Zones. The subject property is within a Residential Detached Zone, R-60, and abuts other properties within the same zone that are improved with residential uses. Staff states that existing fencing in the rear yard provides sufficient screening between the proposed use and adjacent homes while the remainder of the property is surrounded by an “opaque, 6-foot tall fence along the northern, eastern and southern property lines.” Exhibit 19, p. 12.

Conclusion: The Hearing Examiner concludes that the screening along property boundaries is compatible with the surrounding area and sufficient to mitigate any impact to adjacent lots.

3. Outdoor Lighting

While no additional lighting is proposed under this application, Zoning Ordinance 59.6.4.4.E. requires that:

“Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or Employment zone.”

Staff found that the existing lighting “does not cause any unreasonable glare on neighboring properties.” Exhibit 19, p. 12. There is no evidence in the record to suggest that the existing lighting on the property exceeds residential lighting standards or that additional lighting would be required or beneficial for this use or adjacent lots. Lastly, the operation of the Group Day Care occurs only during daytime hours when exterior lighting would not be necessary.

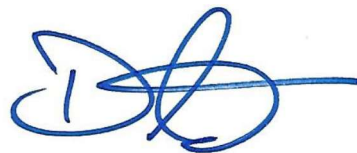
Conclusion: From this evidence, the Hearing Examiner finds that the lighting on the property will be at residential levels compatible with the surrounding residential area and adjacent uses.

IV. Conclusion and Decision

As set forth above, the application meets all the standards for approval in Articles 59.3, 59.4, 59.6 and 59.7 of the Zoning Ordinance. Based on the foregoing findings and conclusions, the Hearing Examiner hereby **GRANTS** the Applicant's request for a conditional use under section 59.3.4.4.D of the Zoning Ordinance, and further **GRANTS** the requested parking waiver for two (2) off-street parking spaces to use the subject property as a Group Day Care for up to 12 children at 9803 Montauk Avenue, Bethesda, Maryland, subject to the following conditions:

1. The Group Day Care facility must be limited to a maximum of twelve (12) children and two (2) non-resident employees;
2. The hours of operation are limited to Monday through Friday, 7:30 a.m. to 6:00 p.m.;
3. The Applicant must schedule staggered drop-off and pick-up of children with a maximum of two (2) vehicles dropping off or picking up children during any fifteen (15)-minute period; and
4. The Applicant and any successors in interest must obtain and satisfy the requirements of all Federal, State, and County licenses, regulations, and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant and any successors in interest shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 13th day of August 2021.



Derek J. Baumgardner
Hearing Examiner

RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>

PLEASE NOTE THE FOLLOWING BOARD OF APPEALS FILING REQUIREMENTS DURING THE COVID-19 PANDEMIC:

The Board of Appeals website sets forth these procedures for filing documents with the Board:

Because remote operations may not always allow us to promptly date-stamp incoming U.S. Mail, until further notice, all time-sensitive filings (administrative appeals, appeals of conditional use decisions/requests for oral argument, requests for public hearings on administrative modifications, requests for reconsideration, etc.) should be sent via email to BOA@montgomerycountymd.gov, and will be considered to have been filed on the date and time shown on your email. In addition, you also need to send a hard copy of your request, with any required filing fee, via U.S. Mail, to the Board's 100 Maryland Avenue address (above). Board staff will acknowledge receipt of your request, and will contact you regarding scheduling.

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If you have questions about how to file a request for oral argument, please contact Staff of the Board of Appeals.

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of

record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

Notification of Decision sent to:

Anna Gonzalez
Aaron Savage
Barbara Jay, Executive Director, Board of Appeals
James Babb, Treasury Division
Adjoining property owners